IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 94 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SAVJIBHAI LALJIBHAI GONDALIYA

Appearance:

1. Criminal Revision Application No. 94 of 2000

MR SJ DAVE, APP for Petitioner No. 1

MR KJ SHETHNA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/03/2003

ORAL JUDGEMENT

This is a revision application filed by the State of Gujarat, in order to challenge an order recorded by

the learned Special Judge at Surendranagar, on 05/11/99 discharging and dropping the proceedings against the respondent, on the ground that the sanction accorded and produced on record, was not a legal and a valid one.

2. The petitioner herein - The State of Gujarat, has preferred this revision application, in order to challenge the said order of discharge of the respondent. Rule was issued and Mr.K J Shethna learned advocate appeared on behalf of the respondent.

3. During the course of hearing, Mr.K J Shethna learned advocate for the respondent states that there is some factual dispute, as to who is the competent authority and who can accord sanction to prosecute the respondent. That the State has produced certain documents and it would be necessary for the State to prove the same at the evidence. It also appears that when the documents are produced on record, then in that event, it would be necessary for the trial court to allow the parties to prove those documents and to appreciate the materials and to decide as to whether or not the sanction accorded is legal and valid and as to whether the Officer according sanction, was competent to sanction prosecution of the respondent.

4. In above view of the matter, therefore, at the suggestion of the learned advocate for the respondent and after hearing the learned advocates for the parties, it is found that the above procedure suggested, is legal and proper and in the fitness of things. Therefore, the trial court will be able to deal with and decide the aforesaid issue, after appreciating the materials placed before it and during the course of the judgment.

5. For the foregoing reasons, the present revision application is allowed. The order impugned in this revision application is ordered to be set aside. The matter is remanded to the trial court with a direction to permit the parties to lead evidence and to decide the issue of sanction, after conclusion of trial and during the course of the judgment. Rule is made absolute to the above extent.

(D. P. Buch, J.)

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